

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
The New York Times Information Service, Inc. :  
for Redetermination of a Deficiency or a Revision :  
of a Determination or a Refund of Franchise Tax on :  
Business Corporations under Articles 9-A & 27 of :  
the Tax Law for the Year 1978. :  
\_\_\_\_\_ :

AFFIDAVIT OF MAILING

State of New York  
County of Albany


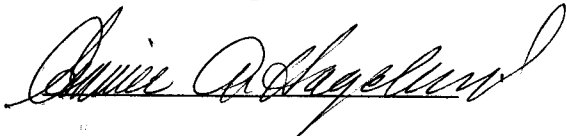
David Parchuck, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 15th day of April, 1983, he served the within notice of Decision by certified mail upon The New York Times Information Service, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

The New York Times Information Service, Inc.  
1719A Route 10  
Parsippany, NJ 07054

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this  
15th day of April, 1983.

AUTHORIZED TO ADMINISTER  
OATHS PURSUANT TO TAX LAW  
SECTION 174

STATE OF NEW YORK

STATE TAX COMMISSION

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State of New York  
County of Albany

David Parchuck, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 15th day of April, 1983, he served the within notice of Decision by certified mail upon Robert S. Tobin the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Robert S. Tobin  
The New York Times Company  
229 W. 43rd St.  
New York, NY 10036

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the representative of the petitioner herein and that the address set forth on said wrapper is the last known address of the representative of the petitioner.

Sworn to before me this  
15th day of April, 1983.

David Parchuck

James A. Hagelund

AUTHORIZED TO ADMINISTER  
OATHS PURSUANT TO TAX LAW  
SECTION 174

STATE OF NEW YORK  
STATE TAX COMMISSION  
ALBANY, NEW YORK 12227

April 15, 1983

The New York Times Information Service, Inc.  
1719A Route 10  
Parsippany, NJ 07054

Gentlemen:

Please take notice of the Decision of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 1090 of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

NYS Dept. Taxation and Finance  
Law Bureau - Litigation Unit  
Albany, New York 12227  
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative  
Robert S. Tobin  
The New York Times Company  
229 W. 43rd St.  
New York, NY 10036  
Taxing Bureau's Representative

## STATE TAX COMMISSION

of

## DECISION

Petitioner, The New York Times Information Service, Inc., 1719A Route 10, Parsippany, New Jersey 07054, filed a petition for redetermination of a deficiency or for refund of franchise tax on business corporations under Articles 9-A and 27 of the Tax Law for the year 1978 (File No. 31791).

A formal hearing was held before Doris E. Steinhardt, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on April 30, 1982 at 9:00 A.M. Petitioner appeared by Robert Tobin, Esq. The Audit Division appeared by Paul B. Coburn, Esq. (Alexander Weiss, Esq., of counsel).

## ISSUE

Whether petitioner's failure to file its franchise tax report and to pay the franchise tax due for the year at issue in a timely manner was due to reasonable cause, and not willful neglect.

## FINDINGS OF FACT

1. On or about March 6, 1979, petitioner, The New York Times Information Service, Inc. ("NYTIS"), filed an Application for 3 Month Extension for Filing Tax Report (Form CT-5) for the year 1978. Petitioner computed the remittance due with the extension, as follows:

Estimated tax for taxable period for which the extension was requested	\$ 2,500.00
First installment for taxable period following that covered by the application	625.00
Total	<u>\$ 3,125.00</u>
Prepayments	<u>13,484.00</u>
Balance Due	<u>-0-</u>

On or about June 13, 1979, petitioner sought an additional extension to September 15, 1979 within which to file its 1978 franchise tax report. In this second request, Mr. Lawrence Lynch, petitioner's state tax accountant, stated, "This additional extension of time is requested as we will be unable to complete all schedules of our Federal Income Tax Return by June 15 and therefore cannot complete our State tax return by that date."

2. On October 24, 1979, the Audit Division issued to NYTIS a Notice and Demand for Payment of Corporation Tax Due, assessing interest in the amount of \$2,287.60 and penalties in the amount of \$13,832.00 for late filing of its franchise tax report for the year 1978, pursuant to sections 1085(a)(1) and (2) of Article 27 of the Tax Law. The Audit Division considered petitioner's extension request on Form CT-5 invalid because, although timely filed, the total remittance enclosed therewith did not equal 100 percent of the prior year's tax (\$33,932.00) or 90 percent of the tax for 1978 (\$60,015.60), as required by sections 211.1 and 213.1 of Article 9-A of the Tax Law and 20 NYCRR 6-4.4 and 7-1.3.

3. On November 14, 1979, NYTIS forwarded a check to the Audit Division for \$2,287.60 for interest, along with a letter protesting the imposition of penalties.

4. On April 21, 1982, the Audit Division recalculated the penalty imposed upon petitioner, and the Audit Division has stipulated that the correct amount due is \$5,945.00.

5. NYTIS, a Delaware corporation, is a wholly-owned subsidiary of The New York Times Company ("Times"). It operated as the marketing agent for The New York Times Information Bank ("IB") in all states outside of New Jersey, the site of its principal offices.

IB was a division of Microfilming Corporation of America ("MCA"), which in turn was a wholly-owned subsidiary of the Times. This division operated a computer-based information storage and retrieval system. Both NYTIS and IB were headquartered in the same building in Parsippany, New Jersey.

For accounting purposes, NYTIS and IB were treated within the Times corporate family as one entity, denominated the Information Bank, because both businesses were located in Parsippany and both were concerned with microform, microfilm and microfiche. Petitioner's president functioned as the chief executive officer of IB, and there was only one telephone number for both NYTIS and IB in Parsippany.

6. Financial information for the Information Bank (NYTIS and IB) was routinely relayed on a consolidated basis to corporate headquarters in Manhattan, New York. According to corporate procedures, the Information Bank (NYTIS and IB) and all other subsidiaries were required to file annual financial results with the controller's office of the Times shortly after year's end, using estimates if necessary. The data was incorporated in reports to the Securities and Exchange Commission and to shareholders, among others. The Information Bank (NYTIS and IB) filed one consolidated "financial package" with the Times.

7. Each year the corporate tax department of the Times devises forms to glean from the subsidiaries the information needed to prepare federal and state tax returns. The controller of each subsidiary completes the forms with the information requested and returns them to the Times' tax department by May 15

of the year succeeding the taxable year for which returns are being prepared. The centralized tax department prepares all returns (except sales and use tax returns and property tax returns which are filed by the subsidiaries), and forwards the completed returns to the subsidiaries for signatures and for checks if payment is due, with instructions for proper filing.

IB, as a division of MCA, filed "tax packages" with the Times' tax department and tax returns as an entity separate from NYTIS. Thus, the Information Bank filed two tax packages, one for NYTIS and one for IB.

8. For the year under consideration, Mr. Lawrence Lynch was the accountant in the Times' tax department responsible for state and local compliance, including the filing of petitioner's extension application on Form CT-5. Lynch was supervised by Mr. John Turck, assistant to the tax director. Approximately 3 or 4 days prior to the filing of the CT-5 (on March 6, 1979), Lynch told Turck he required the book income of petitioner and asked him if he had any such information. Turck advised Lynch to call Mr. Vincent Cimmino, controller of the Information Bank (NYTIS and IB). Lynch subsequently telephoned Cimmino and asked him for the financial results for 1978. Cimmino, apparently assuming the request was for the consolidated entity consisting of NYTIS and IB, informed Lynch that there was a loss for the year. However, the loss had two components: a gain for NYTIS and a larger loss for IB. This misunderstanding resulted in an underpayment of tax with petitioner's Form CT-5. As a general matter, Turck reviewed Lynch's work but in this instance, did not review the extension request, possibly because of the large number of returns and extensions the tax department was in the process of preparing.

9. At the time Lynch filed petitioner's CT-5 for 1978, he had been employed by the Times for approximately 2 years. He had previously been

employed by a public accounting firm and also by the California tax department as an auditor. During his tenure with the Times, Lynch was studying on a part-time basis for his master's degree in taxation.

10. As controller of the information Bank (NYTIS and IB), Cimmino was responsible for the day-to-day accounting operations of the two entities (e.g., cash disbursements, payroll and capital expenditures). His tax-related duties were very circumscribed, consisting of proper completion of the blank "tax packages", as above-described. Concerning the telephone conversation with Lynch, Cimmino "assumed it had something to do with the taxes and more specifically, the state taxes, but not any more than that."

11. Petitioner maintains that a good faith but mistaken belief arose with regard to the 1978 financial results of NYTIS; and that its actions and the actions of its employees demonstrate the exercise of ordinary business care and prudence, thereby satisfying the standard of reasonable cause for waiver of the penalties.

#### CONCLUSIONS OF LAW

A. That pursuant to section 211.1 of the Tax Law, petitioner's 1978 tax report was due to be filed on or before March 15, 1979, unless on or before that date petitioner had filed an application for extension of time within which to file its report and paid on or before such filing the amount properly estimated as its tax.

The regulations of the Tax Commission provide that a taxpayer making application for an extension must pay on or before the due date of its report (without regard to any extensions) its properly estimated tax; and further, that the tax will be deemed properly estimated if it is equal to at least 90 percent of the tax as finally determined, or the tax as reflected on the



taxpayer's report for the prior taxable year, if the preceding year was a taxable year of 12 months. 20 NYCRR 7-1.3.

B. That paragraphs (1) through (3) of subdivision (a) of section 1085 of the Tax Law levy penalties for failure to file franchise tax reports and to pay the amounts shown or required to be shown thereon in a timely manner, unless "such failure is due to reasonable cause and not due to willful neglect."

C. That 20 NYCRR 9-1.5, as in force for the year at issue, provides that grounds for reasonable cause must be clearly established and may include the following:

"(1) death or serious illness of the responsible officer or employee of the taxpayer, or his unavoidable absence from his usual place of business;

"(2) destruction of the taxpayer's place of business or business records by fire or other casualty;

"(3) reliance on advice of a competent advisor such as an attorney or accountant;

"(4) timely prepared reports misplaced by a responsible employee and discovered after the due date."

The above-quoted regulation was amended, effective April 1, 1981, to delete the third ground and to add the following grounds:

"inability to obtain and assemble essential information required for the preparation of a complete return despite reasonable efforts;

"pending petition to Tax Commission or formal hearing proceedings involving a question or issue affecting the computation of tax for the year of delinquency;

"any other cause for delinquency which appears to a person of ordinary prudence and intelligence as a reasonable cause for delay in filing a return and which clearly indicates an absence of gross negligence or willful intent to disobey the taxing statutes."

D. That petitioner's late filing of its 1978 franchise tax report and late payment of franchise tax were not due to reasonable cause such as would be

grounds for abatement of the penalties. In the course of preparing and filing Form CT-5, Application for 3 Month Extension for Filing Tax Report, petitioner's employees failed to exercise ordinary business care and prudence. When Lynch telephoned Cimmino to obtain the information required for filing Form CT-5, he apparently did not specifically inquire about the income of NYTIS. Cimmino did not attempt to narrow Lynch's inquiry; and cognizant that NYTIS and IB filed separate tax packages and that Lynch was associated with the centralized tax department, he nonetheless furnished Lynch with the combined financial result for the two entities. Finally, Turck did not adequately supervise or review Lynch's preparation of the extension request. When viewed individually, each of these acts or omissions might be excusable; but when taken together, they cannot be justified.

E. That the petition of The New York Times Information Service, Inc. is hereby denied, and the Notice and Demand for Payment of Corporation Tax Due, as reduced to \$5,945.00, is sustained.

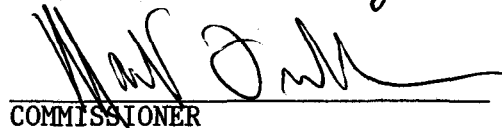
DATED: Albany, New York

APR 15 1983

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER